

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

(1)	DAVID RUBLE, II,)	
	Petitioner,)	
)	
-vs-)	Case No. 19-CV-114-GKF-FHM
)	
(1)	JOE ALLBAUGH¹, DIRECTOR)	
	Respondent)	

**PETITIONER’S MOTION FOR LEAVE TO FILE AN
AMENDED PETITION PURSUANT TO FED. R. CIV. P. 15**

COMES NOW, the Petitioner by and through counsel, Debra K. Hampton, hereby submits this as “Petitioner’s Motion for Leave to File an Amended Petition pursuant to Fed. R. Civ. P. 15. In support thereof, Petitioner states the following:

1. Petitioner retained the undersigned on October 28, 2019, and states this Motion is being made in the interest of justice to allow counsel time to adequately investigate and prepare an Amended Petition.

2. This request is not being made to cause any undue delay as Counsel must have time to adequately and competently represent the interest of the Petitioner. Counsel is requesting 30 days from the date of the Court’s expected Order to file an Amended Petition.

3. The Petitioner’s claims appear to be meritorious and after a review of the initial docket in Case No. 19-CV-114-GKF-FHM there are various documents to review and a state court record of 1676 pages in length.

¹ Joe Allbaugh resigned from his position as Director of the Oklahoma Department of Corrections on June 12, 2019. Scott Crow has been named as the Interim Director and should be substituted for Allbaugh.

4. The Respondent has filed an Entry of Appearance but has not filed a responsive pleading.

5. This Motion is timely.

ARGUMENT AND AUTHORITY

The Petitioner seeks leave to file an Amended Petition for Habeas Relief under Fed. R. Civ. P. 15 (a)(2) which provides for amendments; In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The Court "should freely give leave when justice so requires." Petitioner also asserts that under Fed. R. Civ. P. 15 (c)(1)(B) would allow for an amendment on Relation Back of Amendments, that provides: (B) ***the amendment asserts a claim*** or defense that arose out of the conduct, transaction, or occurrence set out—or ***attempted to be set out***—in the ***original pleading***.

CONCLUSION

WHEREFORE, Petitioner asserts that he is being held unlawfully in violation of the due process clause and leave to amend should be freely given when justice so requires. *Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1205 n. 4 (10th Cir. 2006). Petitioner's request for leave to amend is made in the interest of justice and will not cause undue prejudice to the Respondent nor is amending the Petition futile. See *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962). Petitioner respectfully moves this Court to grant his Motion for Leave to File an Amended Petition where justice so requires.

IT IS SO PRAYED.

Respectfully Submitted,

/s/ DEBRA K. HAMPTON

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Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2019, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrant:

Office of the Attorney General, e-mail: fhc.docket@oag.state.ok.us

Tessa L. Henry, Assistant Attorney General tessa.henry@oag.ok.gov

I hereby certify that on this 29th day of October, 2019, I served the attached document by mailing to the Petitioner as he is not registered participants of the ECF System:

David Ruble II # 744537
Lawton Correctional Facility
8607 SE Flower Mound Road
Lawton, OK 73501

/s/ DEBRA K. HAMPTON

DEBRA K. HAMPTON